

**PT 06-23**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**UHLICH CHILDREN'S ADVANTAGE  
NETWORK,**

**Applicant**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**Docket No: 05 PT 0051  
Real Estate Tax Exemption**

**For 2004 Tax Year**

**P.I.N. 19-14-431-001**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Kevin Hynes, O'Keefe, Lyons & Hynes, LLC, on behalf of Uhlich Children's Advantage Network; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether 9% of the building and site and 9% of the parking located on Cook County Parcel, identified by P.I.N. 19-14-431-001 (hereinafter the "subject property") should be exempt from 2004 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On February 24, 2005, Uhlich Children's Advantage Network (hereinafter "UCAN") filed a Property Tax Exemption Complaint

with the Cook County Board of Review seeking exemption from 2004 real estate taxes for the subject property. Dept. Ex. No. 2. The Board reviewed UCAN's Complaint and recommended that 91% of the building and site and 91% of the parking be exempt for 35%<sup>1</sup> of the 2004 assessment year. The Department of Revenue of the State of Illinois (hereinafter the "Department") accepted the Board's recommendation in a determination dated June 9, 2005 finding that 9% of the building and site and 9% of the parking on the subject property was not in exempt use in 2004. Dept. Ex. No. 1. UCAN filed an appeal of the Department's denial of exemption for the 9% of the building and parking. On March 15, 2006, a formal administrative hearing was held with Kathy McCarthy, social worker for UCAN, testifying. Following a review of the testimony and evidence, it is recommended that the 9% of the building and site and 9% of the parking be exempt for 35% of the 2004 assessment year.

**FINDINGS OF FACT:**

1. Dept. Ex. Nos. 1 and 2 establishes the Department's jurisdiction over this matter and its position that 9% of the building and site and 9% of the parking on the subject property was not in exempt use during 2004. Tr. pp. 8-9; Dept. Ex. Nos. 1 and 2.
2. The subject property, located at 3255 West 62<sup>nd</sup> Place in Chicago, contains a 12-unit apartment building and parking. Participants in UCAN's Transitional Living Program, ("TLP") live in 10 of the 12 units. The 11<sup>th</sup> unit is a play area for children, a computer access area for participants in TLP and a bedroom used for emergency placement. These 11 units

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<sup>1</sup> The subject property was purchased on August 26, 2004. August 26 through December 31 constitutes 35% of the assessment year and the 35% figure was not at issue in the evidentiary hearing.

constitute the 91% exemption for the building and parking for 35% of the 2004 assessment year. Tr. pp. 12-16, 22-24.

3. TLP is a program for wards of the State of Illinois, females between the ages of 16 and 21. They have been physically and/or sexually abused. Most of the girls are teen parents. TLP works with the girls to prepare them for emancipation from the Illinois Department of Children and Family Services (“DCFS”). TLP offers individual and group therapy, education, teaching of life skills (cooking, cleaning, budgeting, time management) and conflict resolution. Tr. pp. 20-21.
4. TLP offers specialized support and services for UCAN clients and their children. TLP participants are taught healthy parenting techniques, personal confidence and other skills necessary to move to an independent living situation with their children. Tr. pp. 12-16; App. Ex. Nos. 3, 4 and 5.
5. A houseparent and her husband reside in the 12<sup>th</sup> unit on the subject property, which constitutes the 9% of the building and site and 9% of the parking that was denied an exemption for 2004. The job description for “houseparent” states that the houseparent “provides direct individual services to adolescent teens and teen parents and their children with an emphasis on mentoring, relationship building and forming a sense of community in the home. This includes the ability to identify a client’s service needs, working directly with clients to teach needed daily living, coping and interpersonal skills; role modeling appropriate behaviors and ensuring client’s compliance with program rules and expectations, while

following all UCAN's policies, procedures and practices.” Tr. pp. 22-23; App. Ex. No. 6.

6. The houseparent resides on the subject property 24 hours/day and she is required to live there. The houseparent ensures the safety and well-being of the girls who live there and their children, ensures the girls are following the rules, that they are in by curfew and attend school, that there are no drugs or alcohol being used, that no boyfriends or friends are sneaking in and that the girls keep their apartments clean. The houseparent teaches cooking, how to do laundry, parenting skills including bathing a baby and breast-feeding. The houseparent may take the girls to doctor's appointments and handle conflict resolution and crisis intervention if fights develop between the girls. Tr. pp. 24-25, 28-29.
7. The houseparent meets with the girls individually two or three times per day. The houseparent attends treatment plan meetings once a week where a client's progress is reviewed and the houseparent has input into treatment planning. The houseparent conducts daily observations of client's behavior, skills, emotional status and symptoms. The houseparent makes sure that the clients take their medicine, which may be for mental illness and depression disorders. Tr. pp. 25-30, 31; App. Ex. No. 6.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that the Uhlich Children's Advantage Network has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant exempting the 9% of the building and site and

9% of the parking at issue on the subject property for 35% of the 2004 assessment year.

In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by "institutions of public charity" and (2) "actually and exclusively used for charitable or beneficent purposes" (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968). Ownership of the subject property is not at issue in this proceeding because the Department found in its June 9, 2005 determination that 91% of the building and site and 91% of the parking on the subject property was exempt for 35% of the 2004 assessment year, thereby determining that the subject property was, in fact,

owned by an institution of public charity. The only issue in this proceeding is whether the 9% of the building and site and 9% of the parking found not to be exempt were actually and exclusively used for charitable or beneficent purposes in 2004. This 9% of the subject property constitutes the unit in the apartment building and the parking used by the houseparent.

By comparing the facts of this case to cases where an exemption for residential property was denied, I am able to conclude that the 9% of the building and site and 9% of the parking on the subject property should be exempt from property taxes for 35% of the 2004 assessment year. In Benedictine Sisters v. Dept. of Revenue, 155 Ill. App. 3d 325 (2<sup>nd</sup> Dist. 1987), the court determined that caretakers' residences located on the grounds of a convent did not qualify for exemption based on religious use because the residences were not primarily used for religious purposes. The caretakers did not perform religious-related activities and no religious activities were conducted in their residences. The court in Benedictine based its ruling on the "standard set out in" MacMurray College v. Wright, 38 Ill. 2d 272 (1967), where the Court held that an exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the objectives, or efficient administration of the particular institution. Benedictine at 329.

In contrast to the caretakers in Benedictine, the houseparent in the TLP program is absolutely necessary for the accomplishment of TLP's objectives. TLP offers individual and group therapy, education, teaching by the houseparent of life skills (cooking, cleaning, budgeting, time management) and conflict resolution to girls, between the ages of 16 and 21, who are wards of the State of Illinois. Tr. pp. 20-21. The houseparent, who resides on the subject property, meets with the girls individually two or three times per

day. Tr. p. 25. TLP prepares the girls for emancipation from DCFS at age 21 “where they have an education and then they are able to take care of themselves and live independently from anybody’s support.” Tr. p. 21.

The houseparent attends treatment plan meetings once a week where a client’s progress is reviewed and the houseparent has input into treatment planning. The houseparent conducts daily observations of client’s behavior, skills, emotional status and symptoms. The houseparent makes sure that the clients take their medicine, which may be for mental illness and depression disorders. Tr. pp. 25-30, 31; App. Ex. No. 6. It is abundantly clear that the “efficient administration” of the TLP Program requires that a houseparent reside on the subject property and be available to the participants 24-hours-a-day.

Similarly, in Lutheran Child and Family Services v. Dept. of Revenue, 160 Ill. App. 3d 420 (2<sup>nd</sup> Dist. 1987), the court found that an apartment building for six staff members did not qualify for a exemption from property taxes. Lutheran Child and Family Services, similar to UCAN, operated a residential care and treatment facility for children. The court noted that residential property is exempt if one of two conditions is met: Either (1) the resident employee performs an exempt function and is required by those exempt duties to live in the residence; or (2) the resident-employee performs his duty in furtherance of the institution’s exempt purpose. *Id.* at 425.

In Lutheran, none of the staff members was required to live in the apartment building as a condition of their employment. The apartment building served exclusively as a residence and no educational activities were performed there. The children’s residential facility was staffed 24-hours-a-day but the residents of the apartment house “were not usually needed other than during their normal shifts,” and were “rarely” called

to quell a disturbance at the facility. *Id.* at 426. The court found that, although it was convenient to have the staff members on the premises, it was not necessary to have them there on a regular basis. *Id.*

UCAN satisfies both of the conditions noted in Lutheran. The “Job Description” for “Houseparent” requires that this be a “live in position requiring direct contact in-home with clients and clients’ children.” Moreover, the houseparent’s primary function in the apartment building is to participate in implementing the TLP. “The TLP houseparent provides direct individual services to adolescent teen and teen parents and their children with an emphasis on mentoring, relationship building and forming a sense of community within the home.” App. Ex. No. 6. It is apparent that TLP could not function without a residential houseparent.

In exemption cases, the applicant bears the burden of proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Based on the testimony and evidence admitted at the evidentiary hearing, I conclude that the houseparent’s apartment and parking on the subject property is necessary for the accomplishment, fulfillment and efficient administration of TLP’s objectives and that the apartment and parking are used for charitable purposes.

For the above stated reasons, it is recommended that the Department’s determination of June 9, 2005 denying a property tax exemption for 9% of the building and site and 9% of the parking on Cook County Parcel, P.I.N. 19-14-431-001, should be reversed and that 9% of the building and site and 9% of the parking should be exempt from property taxes for 35% of the 2004 assessment year.



Kenneth J. Galvin  
Administrative Law Judge

June 7, 2006